



DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Extension and Reorganization of Information Collections: OMB Control No. 1205-0466, ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142, Application for Temporary Employment Certification, and OMB Control No. 1205-0404 ETA-9144, H-2A Certification Letter with Notification, 1205-NEW1; and 1205-NEW2.

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

ETA is soliciting comments concerning the collection of data in the following information collections: Office of Management and Budget (OMB) Control Number 1205-0466, currently containing ETA Form 9141, Application for Prevailing Wage Determination, and ETA Form 9142, Application for Temporary Employment Certification, which expires on October 31, 2012; and OMB Control Number 1205-0404

containing the H-2A Certification Letter known as ETA-9144. The Department proposes to divide 1205-0466 into three distinct information collection requests (ICRs), segregated by program, and to merge 1205-0404 into the collection that remains in 1205-0466. Specifically, the Department proposes to separate out ETA Form 9141, Application for Prevailing Wage Determination into its own collection, 1205-NEW2. The Department also proposes to divide the ETA Form 9142, Application for Temporary Employment Certification, into two collections, one to remain as 1205-0466 and to contain the ETA Form 9142A, H-2A Application for Temporary Employment Certification and Appendix A, along with other information collection burdens for the H-2A Temporary Labor Certification Program, while the second would be 1205-NEW1 and contain ETA Form 9142B, H-2B Application for Temporary Employment Certification and Appendix B, along with all the information collection burdens for the H-2B Temporary Labor Certification Program. Once separated, 1205-0404, which contains one additional information collection burden for the H-2A program, would be merged with 1205-0466 so that most of the H-2A information collection burdens can be accounted for in one ICR.

In order to meet its responsibilities under the Immigration and Nationality Act (INA), the Department needs to extend the existing collection of information pertaining to programs requiring prevailing wage determinations and the H-2A and H-2B programs for temporary employment certification in agricultural and non-agricultural occupations. The Department is utilizing this opportunity to separate the collections into more manageable and easy to understand ICRs.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before **[INSERT DATE 60 DAYS FROM DATE OF**

PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit written comments to William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Room C-4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202-693-3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-2768. E-mail at ETA.OFLC.Forms@dol.gov subject line: ETA Form 9141, ETA Form 9142A and ETA Form 9142B. A copy of the proposed ICRs can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 2012, OMB approved changes to the 1205-0404 and 1205-0466 ICRs in conjunction with recent rulemaking resulting in a final rule published on February 21, 2012 (the 2012 H-2B Final Rule). 77 FR 10038. The 1205-0404 ICR was merged with the 1205-0466 ICR and then the 1205-0466 ICR was extended until April 30, 2015. However, a lawsuit was brought in Federal court in the Northern District of Florida, Pensacola Division, against the Department and an order was issued on April 26, 2012 by the court enjoining the Department from implementing the 2012 H-2B Final Rule. (*Bayou Lawn & Landscape Services, et al. v. Hilda L. Solis, et al.*, 12-cv-00183-RV-CJK.) Therefore, the Department sought and received an emergency extension of the two older ICRs that were in effect prior to the rulemaking so that these forms could continue to be used.

The emergency extension of the old forms and information collections expires October 31, 2012. Emergency extensions require agencies to publish a Federal Register Notice and seek comments during the extended validity period. The Department is utilizing this opportunity to make these ICRs more manageable and more transparent to the regulated community by dividing 1205-0466 into several ICRs and once again merging the information contained in 1205-0404 into 1205-0466.

The information collections are required by sections 203(b)(3); 212(a)(5)(A); 212(m), (n), (t); 214(c); and 218 of the INA (8 U.S.C. § 1153(b)(3); 1182(a)(5)(A); 1182(m), (n), (t); 1184(c); and 1188); 8 CFR 214.2 (h); and 20 CFR 655.135(c) and (d). The INA and applicable DHS regulations require the Secretary of Labor (Secretary) to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) for the purpose of performing certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before an employer may petition for temporary or permanent skilled or unskilled foreign workers, it must submit a request for certification to the Secretary containing the elements prescribed by the INA and regulations, which differ depending on the visa program under which the labor is sought. In addition, before the Secretary can certify that wages for U.S. workers have not been adversely affected, she must ensure that the employer offers the required wage to the foreign workers in accordance with the Department's applicable labor certification regulations. To ensure that U.S. workers are given as much time as possible to apply for agricultural work, the agricultural employer is required to inform the SWA if the H-2A

workers will be leaving their home country later than the third day preceding the employer's first date of need.

II. Review Focus

The Department is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility, and clarity of the information to be collected; and

- * Minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New Collections and Extension with revisions.

Title(s): ETA Form 9141, Application for Prevailing Wage Determination; ETA Form 9142A, H-2A Application for Temporary Employment Certification; ETA Form 9142B, H-2B Application for Temporary Employment Certification; and ETA-9144, H-2A Certification Letter with Notification.

OMB Control Number: 1205-0466; 1205-0404; 1205-NEW1; 1205-NEW2.

Affected Public: Businesses or other for-profits, not-for-profits, farms, States, local governments, and tribal governments.

Form(s): Forms ETA-9141, ETA-9142A, ETA-9142B, and ETA-9144

Total Annual Respondents: 474,181

Annual Frequency: On occasion

Total Annual Responses: 1,071,442

Average Time per Response: 25 minutes

Estimated Total Annual Burden Hours: 458,350

Total Annual Burden Cost for Respondents: \$1,529,370

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed on this 3rd day of August, 2012.

Jane Oates

Assistant Secretary for Employment and Training

Billing Code: 4510–FP-P

[FR Doc. 2012-19944 Filed 08/14/2012 at 8:45 am; Publication Date: 08/15/2012]